

The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

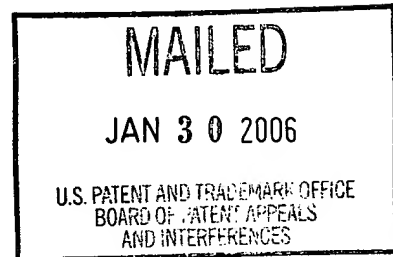
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte RAYMOND SELTZER,
DAVID DEVORE, GLEN T. CUNKLE, CYRIL HEITNER,
JOHN A. SCHMIDT, PETER F. MCGARRY,
JEAN-PIERRE WOLF and RANDALL B. NELSON

Appeal No. 2006-0231
Application No. 09/234,253

ON BRIEF



Before KIMLIN, WARREN and JEFFREY T. SMITH, Administrative Patent Judges.
JEFFREY T. SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 11, 35 to 40 and 44. Claims 12 to 34 stand withdrawn from consideration. (Brief, p. 2). The Examiner has indicated that the subject matter of claim 45 is allowable. (Answer, p. 2). We have jurisdiction under 35 U.S.C. § 134.

BACKGROUND

The present invention relates to chemical pulp or paper compositions. According to Appellants, the pulp or paper compositions have reduced loss of brightness and enhanced resistance to yellowing by virtue of the composition comprising certain hindered amine derivatives. (Brief, p. 3). Representative claim 44, as presented in Appellants' Brief, is reproduced below:

44. A composition having reduced loss of brightness and enhanced resistance to yellowing which comprises
- (a) a pulp or paper, and
 - (b) an effective stabilizing amount of tris(N,N-diethylhydroxylammonium) citrate.

The Examiner relies on the following references in rejecting the appealed claims:

SELTZER et al. (Seltzer)	5,051,511	Sept. 24, 1991
RODGERS et al. (Rodgers)	5,459,222	Oct. 17, 1995 ¹

Claims 1 to 11, 35 to 40 and 44 stand rejected under 35 U.S.C. 103(a) as unpatentable over the combination of Seltzer and Rodgers. (Answer, pp. 3-4). We affirm the rejection.

¹ The date provided for this reference in the Examiner's Answer, page 2, is incorrect.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejection, we make reference to the Answer (mailed October 1, 2004) for the Examiner's reasoning in support of the rejection, and to the Brief (filed July 06, 2004) for the Appellants' arguments there against.

We initially note that Appellants assert that for purposes of appeal the claims stand or fall together. (Brief, p. 4). We select claim 44 as representative of the appealed claims and will limit our discussion thereto.

OPINION

Upon careful review of the respective positions advanced by Appellants and the Examiner, we affirm for the reasons advanced by the Examiner and add the following primarily for emphasis.

Appellants argue "that polyurethane and polyester coatings are unknown as paper coatings and that therefore there is no motivation provided to combine the two references in order to solve the present problem." (Brief, p. 4). Appellants also present a Declaration under Rule 132 by Mr. David Vidal, which states that polyurethane and polyester coatings are unknown as paper coatings.² (Brief, p. 4).

Appellants' argument and declaration are not persuasive. Rodgers discloses polyurethane and polyester coatings are known as paper coatings. (Col. 8, ll. 29-47).

² The declaration was submitted on February 15, 2002.

The statement of the declarant is limited to the disclosure of the three documents cited in the declaration. The cited documents do not include the Rodgers reference cited in the rejection of the claims. (See declaration, page 2). Appellants have not presented a declaration that discusses the disclosure of the Rodgers reference.

Appellants' counsel's unsupported argument is not persuasive. Specifically Appellants' counsel states that the "statement of Rodgers is moot as a paper expert in 2002 stated that polyurethane and polyester coatings are unknown as paper coatings." (Brief, p. 5). As stated above, the declarant did not considered the Rodgers reference when providing the discussion appearing in the declaration. Unsupported arguments of counsel cannot take the place of evidence. See *In re Pearson*, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974).

Appellants argue, in view of the declaration, that those skilled in the art would not combine Seltzer and Rogers because polyurethane or polyester coatings were unknown as paper coatings at the time of filing the present invention and further that Seltzer is aimed at thermoset resins such as automotive coating resins exemplified in working Examples 12-14. (Brief, p. 5).

The Seltzer and Rogers references are not limited to the scope of Appellants' arguments. Seltzer discloses hindered amine light stabilizers which combine low basicity with a peroxy group in the same molecule. According to Seltzer, column 1, lines 57 to 64, the "light stabilizing hindered amine moiety becomes substantially chemically bonded to the substrate and becomes concomitantly resistant to migration,

exudation, leaching, sublimation, volatilization or any process which is prone to remove an additive physically from the substrate it is supposed to protect.” Seltzer also discloses that suitable stabilizers include N,N-diethylhydroxylamine (column 12, line 66) for stabilizing polymers comprising polyurethanes and polyesters. (See col. 8, ll., 12-17 and 30-17). Rodgers discloses polyester and polyurethane compositions suitable for coating pulp and paper. (Col. 8, ll. 29-47). Thus, a person of ordinary skill in the art would have reasonably expected that the light stabilizer of Seltzer could have been added to the paper and pulp coating composition of Rodgers for the light stabilizing properties.

Appellants argue that picking and choosing is required to arrive at the claimed invention because Seltzer only very generically mentions the possible co-use of hydroxylamine stabilizers among a long list of other potential stabilizers and Seltzer also only generically mentions polyesters and polyurethanes among a whole host of polymer substrates. (Brief, p. 5). Appellants also argue the Examiner utilized hindsight to arrive at the claimed invention. (Brief, p. 6).

These arguments are not persuasive because a person of ordinary skill in the art would have reasonably expected that the invention disclosed by Seltzer would have been suitable for the embodiments disclosed therein. Specifically, Seltzer discloses that the stabilizer is suitable for use with polyesters and polyurethanes. The Appellants have not directed us to evidence that the described hydroxylamine stabilizers would not perform as disclosed by Seltzer.

We note that Appellants have not relied upon evidence of unexpected results to rebut the Examiner's obviousness determination.

CONCLUSION

Based on our consideration of the totality of the record before us, having evaluated the *prima facie* case of obviousness in view of Appellants' arguments and evidence, we conclude that the subject matter of claims 1 to 11, 35 to 40 and 44 would have been obvious to a person of ordinary skill in the art from the combined teachings of the cited prior art. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Accordingly, the Examiner's rejection under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(iv)(effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

Affirmed


Jeffrey T. Smith
Administrative Patent Judge

**BOARD OF PATENT
APPEALS
AND
INTERFERENCES**

Appeal No. 2006-0231
Application No. 09/234,253

Page 8

CIBA Specialty Chemicals Corp.
Patent Department
540 White Plains Road
P O Box 2005
Tarrytown, NY 10591-9005